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Paper No. 9

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In re Application of  
Shigeyuki Baba, et al.  
Application No. 09/977,439  
Filed: October 15, 2001  
For: **IMAGE CAPTURE DEVICE, A  
METHOD OF CAPTURING IMAGES,  
AN IMAGE PRODUCING DEVICE AND  
A METHOD OF PRODUCING IMAGES**

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

DECISION ON PETITION  
TO WITHDRAW HOLDING OF  
ABANDONMENT

This is a decision on the petition filed June 23, 2004 which is treated as a Petition to Withdraw Holding of Abandonment pursuant to 37 C.F.R. § 1.181(a). No fee is required.

The petition is **GRANTED**.

The application was abandoned for failure to respond in a timely and effective manner to the Office Action mailed November 20, 2003. A Notice of Abandonment was mailed on June 7, 2004.

Petitioner asserts that a proper response was timely filed. In support of the petition, petitioner has submitted a copy of the applicant's response along with a copy of a date-stamped post card receipt evidencing receipt of the response within the United States Patent & Trademark Office on February 17, 2004. In addition, Applicant's response included a certificate of mailing dated February 12, 2004.

The original correspondence filed was not matched with the file and cannot be located. However, M.P.E.P. § 503 states, “[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that the response was timely filed in the Patent and Trademark Office but not matched with the application file.

In view of the above stated reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file is being forwarded to the Technology Center's technical support staff for entry of the amendment submitted with the petition. From there, the application file will be forwarded to the examiner for appropriate action in due course.



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